

**SUMMARY MINUTES
DURHAM BOARD OF ADJUSTMENT**

February 22, 2000

The meeting was called to order at 8:30 a.m.

ROLL CALL

The Clerk called the roll and recorded attendance as follows:

MEMBERS SEATED

Lavonia Allison
William Brian
James Edney
Kate Fulkerson
Louis Goetz
Evelyn Lovett
Corinne Mabry
David Smith
Connia Watson
Kathy Wright-Moore

MEMBERS NOT SEATED

MEMBERS ABSENT

STAFF PRESENT

Brenda J. Daniel, Clerk, Board of Adjustment
Cassandre Haynesworth, Planning Staff
Betty Johnson, Planning Staff
Karen Sindelar, Deputy City Attorney
Lowell Siler, Deputy County Attorney
Helen Youngblood, Key Leader

SWEARING IN OF WITNESSES

The Chairman administered the oath to the following applicants and witnesses:

Helen Youngblood	Betty Johnson
Petty Bishop	Larry Copeland
Tom Miller	Marvin Barnes
Brian Soltz	John Schew
George Kirschman	John Hearne
Tony Fisher	Rick Stimple
Cliff Credle	

Mr. Watson again welcomed Mr. Goetz to his first official meeting.

HEARING AND DETERMINATION OF CASES

Ms. Johnson asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. All Board members concurred.

Chair Watson read the following statement into the record:

This Board is a quasi-judicial Board and as such, all testimony will be recorded. The process is similar to a court procedure. First the staff will present an overview of the case, then the applicant presents its evidence.

The opponents, if there are any, will then present their evidence. The applicant may then present its rebuttal. Board members may ask questions at any time. All testimony is given under oath. In a few minutes I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

All witnesses should come to the podium and speak directly into the microphone so the testimony can be recorded on tape. Written evidence shall be formally presented to the Chair and a determination will be made about whether it should be accepted. Written evidence can be inspected by either side. All evidence, written and oral, can be objected to. Witnesses are subject to cross-examination.

Opposing representatives will have a chance to question witnesses after all the witnesses for the other side have testified. If you wish to cross-examine, you must raise your hand when I ask for cross-examination and I will recognize you.

The Board will vote on each case after the presentation of all evidence, pro and con, concerning the case. The law requires that in order for an applicant's request to be granted 5 of the 7 voting Board members must approve the request.

Board members may have visited the site in preparation for this meeting.

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SEATED: Mr. Brian, Ms. Fulkerson, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B99-55: A request by Marvin Barnes for a Minor Special Use Permit for a convenience store with gasoline sales as per Sections 4D.1.3.2 and 13.1 of the Durham Zoning Ordinance. The property is located at 805 Broad Street and zoned NC. Tax Map 12-7-13, 14, and 15.

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: Marvin Barnes

Persons Appearing in Opposition: Tom Miller, President of the Watts-Hospital-Hillandale Neighborhood Association

Staff Recommendation was: Approval

Motion: Mr. Smith made a motion to approve the request as submitted based on findings of fact by the Board that Sections 4D.1.3.2, 8.1.23, 9, 10 and 13.1 of the Durham Zoning Ordinance had been met.

Conditions:

1. That the light pole be lowered to 12 feet.
2. That one of the light leads at the northeast corner of the site be removed.
3. That .25 foot candle be maintained at the property line.
4. That the canopy lights be properly shielded.

Seconded By: Ms. Fulkerson

Vote: 2 to 5 (Mr. Brian and Mr. Smith voted yes)

Action: Denied

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SEATED: Mr. Brian, Ms. Fulkerson, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B00-2: A request by Edward and Peggy Bishop for a Minor Special Use Permit for a day care home for a maximum of 12 children, including 3 infants, as per Sections 4A.1.3.7, 7.13, 8.1.15 and 13.1 of the Durham Zoning Ordinance. The property is located at 8509 Doughton Drive and zoned RD (M/LR-B). Tax Map 890B-2-8.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Peggy Bishop

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Ms. Fulkerson made a motion to approve the request as submitted based on findings of fact by the Board that Sections 4A.1.3.7, 7.13, 8.1.15, 9, 10, 12 and 13.1 of the Durham Zoning Ordinance had been met.

Conditions:

1. That all site plan corrections be made.
2. That the daycare home have a maximum of 12 children (including 3 infants).
3. That the hours of operation be 7 a.m. to 5 p.m., Monday through Friday.

Seconded By: Ms. Lovett

Vote: 7 to 0

Action: Approved

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SEATED: Mr. Brian, Ms. Fulkerson, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B99-60: A request by George Kirschmann for a Minor Special Use Permit for an auto sales dealership as per Sections 4D.2.3.9, 8.1.15 and 13.1 of the Durham Zoning Ordinance. The property is located at 5331 N. Roxboro road and zoned SC (E-B Overlay). Tax Map 825-1-20.

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: George Kirschmann, Architect

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Ms. Fulkerson made a motion that the request be approved as submitted based on findings of fact by the Board that Sections 4D.2.5.5, 8.1.15, 9.7, 9.8, 10 and 12 of the Durham Zoning Ordinance have been met..

Conditions: That all site plan corrections be made.

Seconded By: Mr. Brian

Vote: 7 to 0

Action: Approved

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SEATED: Mr. Brian, Ms. Fulkerson, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B99-61: A request by Bethlehem Temple Apostolic Faith Church, Inc. for a Variance from the 25' required front setback as per Section 16.2.1 of the Durham Zoning Ordinance . The property is located at 606 N. Roxboro Street and zoned RM-20. Tax map 122-10-1, 9, 11-13.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Pastor Larry Copeland, Cliff Credle of Credle Engineers

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Ms. Fulkerson made a motion to approve the request as submitted based on findings of fact by the board that Sections 4A.8.3.9 and 16.2.1 of the Durham Zoning Ordinance had been met.

Conditions: N/A

Seconded By: Mr. Goetz

Vote: 7 to 0

Action: Approved

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SEATED: Mr. Brian, Ms. Fulkerson, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B99-62: A request by Bethlehem Temple Apostolic Faith Church, Inc. for a Minor Special Use Permit for a place of worship as per Sections 4A.8.3.9; 7.28, 8.1.15 and 13.1 of the Durham Zoning Ordinance. The property is located at 606 N. Roxboro Street and zoned RM-20. Tax Map 122-10-1, 9, 11-13.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Pastor Larry Copeland; Cliff Credle of Credle Engineers

Persons Appearing in Opposition: None

Staff Recommendation was: Approval subject to site plan corrections

Motion: Ms. Fulkerson made a motion to prove the request as submitted based on findings of fact by the Board that Sections 4A.8.3.9, 7.28, 8.1.15, 9, 10 and 13.1 of the Durham Zoning Ordinance has been met.

Conditions: That all site plan corrections be made.

Seconded By: Mr. Goetz

Vote: 7 to 0

Action: Approved

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SEATED: Mr. Brian, Ms. Fulkerson, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B99-68: A request by The John R. McAdams Co., Inc. for a Minor Special Zuse Permit for a convenience store with gasoline sales as per Sections 4D.1.3.2 and 13.1 of the Durham Zoning Ordinance. The property is located on the north side of Renaissance Parkway and zoned NC(D). Tax Map 503-1-1E.

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: Brian Soltz, John Herndon

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Ms. Fulkerson made a motion to approve the request as submitted based on findings of fact by the Board that Sections 4D.1.3.2, 8.1.23, 9, 10 and 13.1 of the Durham Zoning Ordinance had been met.

Conditions:

1. That the signs be approved by the Inspections Department.
2. That all site plan corrections be made.

Seconded By: Mr. Goetz

Vote: 7 to 0

Action: Approved

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Approval of Summary Minutes

Mr. Brian made a motion, seconded by Mr. Smith, to approve the summary minutes of the December 14, 1999 meeting with no corrections.

All Board members concurred. The motion passed 7-0.

Old Business

- Ms. Fulkerson noted that some disturbing information was presented on a television special regarding day cares on last evening. She noted that since this is an issue that she is deeply involved with and greatly interested in, this message needs to be relayed to the governing bodies so changes to the existing criteria for a day care can be changed. The Board members concurred and noted that further discussion on this issue is warranted and that the governing bodies need to be made aware of this.
- Smart Growth Conference – Mr. Watson noted that this conference will be held March 21 from 6:30 p.m. to 9 p.m. and that the Board needed to meet to prioritize issues that need to be presented at this Conference prior to that meeting.
- The Board voted to have a work session to address the issues regarding smart growth. The meeting has been set for Tuesday, March 7 at 8:30 a.m. The Planning staff will confirm the room and purchase refreshments.
- Helen informed the Board that the nonconforming use issue discussions are still in progress. She will update the Board as more information is passed along to her.
- Mr. Brian noted that the board has trouble with the present wording in the Ordinance. He suggested that the Ordinance should say what it wants the Board to enforce and not have the Board members guessing what the Ordinance means. These comments were referencing an appeal case the Board heard two weeks ago.
- Mr. Watson noted that the Board had sent a letter to the City and County attorney offices regarding the lack of legal representation at a county case and the letter was perceived as being unprofessional and was answered in that vein. He noted that they are still attempting to work through this misunderstanding.
- Mr. Watson reminded all Board members to visit the case sites coming before this Board. He noted that by some of the questions asked during the hearing, it is obvious that some Board members are not visiting the sites.

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There being no further business, the meeting was adjourned at approximately 12 noon.

Respectfully submitted,

**Brenda J. Daniel, Clerk
Durham Board of Adjustment**